HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1269 of 2006

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Between:

M/s. Udayagiri Oil Industry,
Rep., by its Proprietor, Harish Kanchan Katruwar,
S/o. Kanchan Katruwar, Age 34 years,
Occ: Proprietor, M/s. Udayagiri Oil Industries,
Situated at Survey No. 45,
Door No. 3-1-264/A, Rampur Road,
Adilabad

……Appellant

And

A.P Northern Power Distribution Company Limited,
Rep., by its Chief General Manager, Warangal
and two others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri Pratap Narayan Sanghi

December 04, 2006

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 9-10-2006 passed by the learned Single Judge, whereby he refused to entertain the appellant's prayer for issue of a direction to the respondents to revise the electricity bills for the period from January 2002 to September 2002 and to refund or adjust the excess amount already paid.

The appellant industry was established by its Proprietor Harish Kanchan Katruwar in Adilabad District sometime in 1995. After about six years, Andhra Pradesh Northern Power Distribution Company Ltd. (respondent No.1) issued letter dated 31-5-2001 to the appellant requiring it to apply for HT connection on the ground that the two industries i.e., the appellant and M/s.Mathura Oil Industry are owned by the same person and they were situated in the same premises. M/s.Mathura Oil Industry challenged the same by filing O.S.No.80 of 2002 in the Court of Junior Civil Judge, Adilabad. During the pendency of the suit, the appellant and M/s.Mathura Oil Industry filed Writ Petition No. 6881 of 2003 albeit without disclosing the fact that the suit filed by M/s.Mathura Oil Industry in relation to the same subject matter was pending. By an order dated 9-10-2003, the learned Single Judge dismissed the writ petition. The relevant extracts of that order are reproduced below:

> "The Writ Petition is filed challenging the action of the respondents in converting the LT power connection of the petitioners to HT category and issuing bills from January, 2002 to September, 2002 on the basis of such re-categorization.
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> The matter was argued at length. It however, ultimately

emerged that the petitioners filed O.S.No.80 of 2002 in the Court of Junior Civil Judge, Adilabad, for the same relief and they have also filed I.A. No. 96 of 2002 under Order 39 Rule 1 CPC for grant of temporary injunction. The Trial Court passed order dated 8-7-2002 dismissing the I.A. This writ petition is filed subsequent to filing of the suit as well as dismissal of I.A. The petitioners did not disclose that they have filed a suit for the same relief.

Be that as it may, since the petitioners are already prosecuting the remedy before a Civil Court, this court finds that the writ petition is not maintainable.

The writ petition is accordingly dismissed. No costs."

Even though it was erroneously recorded in the aforementioned order that the petitioner and M/s.Mathura Oil Mills filed O.S.No.80 of 2002 in the Court of Junior Civil Judge, Adilabad because, as a matter of fact, the appellant had not joined M/s.Mathura Oil Mills in the civil suit, the latter did not make any attempt to get this error corrected.

After almost three years of dismissal of Writ Petition No.6881 of 2003, the appellant filed Writ Petition No.13698 of 2006 for issue of a direction to the respondents to revise the electricity bills for the period from January 2002 to September 2002 and for refund/adjustment of the excess amount already paid. The same was dismissed the by the learned Single Judge by recording the following observations:

"In this case, admittedly, the petitioner filed W.P.No.6881 of 2003 along with M/s. Mathura Oil Industry, questioning the action of the respondents in not issuing the revised bills. The said writ petition was dismissed on 09.5.2003. The suit being O.S.No.80 of 2002 filed by M/s.Mathura Oil Industry was also dismissed on 22.1.2005. When the notice dated 31.5.2001 issued to the petitioner as well as M.s.Mathura Oil Industry is itself subject matter of the suit and when the said suit as well as writ petition filed by the petitioner were dismissed, at this point of time, the petitioner cannot reagitate the matter. After perusing the judgment of the Division Bench of this Court in

W.A.No.1254 of 2004, this Court is of considered opinion, on facts the case is distinguishable".

Shri Pratap Narayan Sanghi, learned counsel for the appellant argued that the reason assigned by the learned Single Judge for declining relief to his client is legally untenable because it was not a party to O.S No. 80 of 2002 and, therefore, the order under challenge is liable to be set aside.

We have thoughtfully considered the argument of the learned counsel. Although we are inclined to agree with the learned counsel that the solitary reason assigned by the learned Single Judge for non-suiting his client is legally untenable inasmuch as reference to the judgment of O.S.No.80 of 2002 does not relate to the appellant because it was not a party to the suit, we are also convinced that the appellant is not entitled to the relief under Article 226 of the Constitution of India.

The reasons for the aforementioned conclusion of ours are,

(1) The appellant did not seek review of order dated 9-12-2003 passed by the learned Single Judge in Writ Petition No.6881 of 2003 despite the fact that there was an error apparent in recording of that order insofar as the learned Single Judge has assumed that the appellant was a party to O.S No. 80 of 2002 filed by M/s. Mathura Oil Industry;

(2) The policy decision taken by respondent No.1 vide proceedings No.CGM/Comml&RAC/NPDCL/F.II/D.NO. 1133/02, dated 26-09-2002 of which the appellant is seeking to take advantage was very much in existence on the date of filing of Writ Petition No. 6881 of 2003, but the

appellant did not make a prayer for grant of relief in terms of that decision. Therefore, the appellant will be deemed to have consciously waived its right to seek relief on the basis of that decision;

(3) The judgment of the Division Bench in Writ Appeal No. 1254 of 2004 - **A.P. Transco and another Vs. M/s. Shekawati Traders** (decided on 01-09-2004) is also of no help to the appellant because it has not offered any explanation for long time gap of four years counted from the date of the policy decision taken by the respondents on 26-09-2002 and of two years counted from the date of the judgment of the Division Bench;

(4) Even if it is assumed that the policy decision contained in proceedings dated 26-09-2002 is applicable to the appellant's case, relief cannot be granted to it by way of refund or adjustment of the alleged excess amount paid by it because the burden of excess electricity charges must have been transferred to the buyers of the goods manufactured in the unit of the appellant. It is neither the pleased case of the appellant nor any material has been placed before the Court to show that the electricity charges paid by it did not constitute one of the components of the price of the goods manufactured by it. In this view of the matter, an order for refund or adjustment cannot be passed by the Court because that would amount to unjust enrichment. The doctrine of unjust enrichment has been repeatedly

invoked by the Courts for refusing to direct refund of duties, taxes, fees etcetera wrongfully collected by a public authority. In this connection, reference can usefully be made to the judgments of the Supreme Court in **Indian Aluminium Co. Ltd. V. Thane Municipal Corpn.**[1], **Mafatlal Industries Ltd. v. Union of India**[2], **Union of India v. Solar Pesticides Pvt. Ltd.**[3], **Shree Digvijay Cement Co. Ltd. V. Union of India**[4] **and Sahakari Khand Udyog Mandal Ltd. V. CCE**[5].

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2666 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

04-12-2006

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[1] 1992 Supp (1) SCC 480

[2] (1997) 5 SCC 536

[3] (2000) 2 SCC 705

[4] (2003) 2 SCC 614

[5] (2005) 3 SCC 738